

***Recognizing Legal Issues for Same Sex
Clients & Giving Appropriate Advice***

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Milan is a member of the 2008-2010 Friday Fellowship class. She currently serves as a Board member for the following community organizations: Planned Parenthood of Central North Carolina and Stone Circles at the Stone House.

As part of her service to her profession, Milan serves as an officer of the Durham Orange Women Attorneys, a board member of NC Legal Education Assistance Program, and she chairs a project of the Law Related Education Committee of the NC Bar Association.

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LGBT FAMILY

Do fact scenarios?

- Couple seeking whatever protections available in NC
- Couple wanting to get married or got married
- Couple wanting to create family (include surrogacy, out of state SPA)
- Couple splitting up - property, custody

INTRO:

As the laws throughout the United States continue to change and evolve in regards to same-sex relationships, giving advice to LGBT clients in North Carolina is becoming more difficult and more complex. Not only does a family law practitioner need to know the laws of this state, he or she must also know the pertinent law in a state or country where a same-sex couple might have married, had a civil union or registered as domestic partners, as well as the divorce laws of that state and any other states where a same-sex couple might be able to obtain a divorce. In addition, if the couple has any children, an examination must be made of the basis for any parental or custodial rights under the law of the other state and under NC law. Finally, what rights each party might have to various assets could be determined by the original state, North Carolina, or the state in which a party might obtain a divorce. The first section will outline various tools and advice which can provide LGBT clients with as many legal protections as is possible in North Carolina. The second section of this presentation will attempt to provide practitioners with an outline of what issues should be explored in order to adequately advise any same-sex couple who want to separate and divorce.

I. What Can Be Done Now in NC

- Despite Amendment 1, can do contracts, EP docs, parenting agmts, etc.
Just can't marry or have out of state marriage recognized - yet

Ownership of Property

Same-sex couples share financial resources and own property together just like any other married or unmarried couple. But the laws determining ownership, valuation and taxation, may impact married and unmarried couples very differently and careful consideration and advice needs to be given when counseling same-sex couples on how to own property and the consequences of how they manage their financial affairs.

Since documents regarding ownership of property are private contracts between individuals, Amendment One as finally passed does not affect the validity or enforcement of such documents or agreements.

Some issues to cover with clients include:

Create joint ownership of personal property if appropriate:

- Explain the pros and cons of joint ownership (such as access, liability, right of survivorship avoidance of probate and will challenges)

- Consider gift tax issues
- Consider creating “payable on death” accounts at financial institutions, NCGS §§53-146.2, 54-109.57, 54B-130, 54C-165, and brokerage accounts, NCGS §41-40 *et seq.*

Carefully consider how automobiles should be titled:

- Sometimes individually is best in order to avoid joint liability or joint debt obligations and easier when the parties separate - no need to get other party off title, no need to refinance car title, especially when loan is more than value of car
 - Joint ownership may be best if both parties are paying for car together; indicate that it is joint with right of survivorship on the car title, if desired
 - Consider how percentage of ownership would be proven; draft agreement if needed to establish such percentages.

Real property ownership:

- Explain differences between tenants in common (TC) and joint tenants with right of survivorship (JTWROS)
- Explain advantage of JTWROS (guaranteed inheritance and greater protection from will challenges by family members) versus promise of inheritance of partner's TC interest through a will (partner may neglect to do or will may be invalid or partner gives to someone else)
- Most clients will probably want JTWROS; if unequal ownership or clients want flexibility in how interests are to be determined, best to have an agreement detailing ownership percentages and other issues for tax purposes and to establish ownership at death or if couple break up
- Be very careful with language on deed. Property simply titled in two or more names is presumed TC and equally owned. If desire joint tenancy, which presumes each owner owns 100% of the whole, additional language is required. Best language for JTWROS deed: “as joint tenants with right of survivorship, and not as tenants in common” NEVER STATE “tenants in common with right of survivorship”
- If couple legally married in another state, try to get title insurance company to insure title “as tenants by the entirety, of if not, as joint tenants with right of survivorship”

- Each owner can claim tax deductions for mortgage interest and taxes equal to the amount actually paid; but consider effect on value of each ownership interest - if one owner pays more but wants ownership to be equal, must do an agreement stating forth parties' intentions.
- JTWRROS property owned by a deceased partner has some protection from creditors at the death; TC property owned by a deceased partner is subject to creditors' claims.
- Carefully consider tax consequences in any property purchases or transfers between partners, including inheritance, gift and capital gain taxes.

Domestic partnership agreement:

- In NC, no rights are created simply by cohabiting or being in a relationship, and our courts will not apply equitable distribution laws upon dissolution of an unmarried relationship; however, courts will uphold oral and written agreements regarding property
- Encourage clients to do agreements, especially helpful if parties separate; agreement can be used to determine such things as value of ownership between parties, possession, and what legal principles to apply in determining division of property, possible waiver of right to partition, whether parties have any other claims for support, and alternative dispute resolution options.

ADD - Prenups for married couples - consider unique ramifications

Include provision that laws of state of marriage will apply in any mediation or arbitration

Include provision that state where married is forum state unless NC becomes a recognition state

Include binding arbitration (as long as NC is non-recognition state and therefore courts won't consider marriage

Retirement and life insurance:

- Discuss importance of naming desired beneficiaries, both primary and secondary, and the pitfalls of naming the estate
- Know the options available at the death of partner for the surviving partner who now the options available at the death of partner for the surviving partner who is named as the retirement account beneficiary, including ability of non-spouses to roll over retirement accounts to their own IRA rather than be forced to take a lump sum withdrawal and "hardship distributions" for medical or other financial emergencies options.

II. Marriage - considerations and implications

A. General legal framework

Windsor says if valid marriage, must be recognized for federal purposes (as defined by each agency)

Windsor doesn't prohibit states from refusing to recognize valid SS marriages performed elsewhere - and doesn't prohibit states from having their own DOMAs, etc.

These issues are being addressed in lawsuits brought since Windsor

B. What to consider in choosing state/country to get married in:

Requirements for marriage license, etc.

Divorce requirements - don't want clients to end up "wedlocked"

States can do divorce without residency - list states

NCLR publication re Divorce for SS Couples in Non-recognition States

(Haas list)

Evasion statutes (requiring marriage must be legal in home state in order for marriage to be valid in state of celebration) - possibly NH, LA, VT, ILL (check with Joan Burda)

C. Federal benefits - legal framework

Whether marriage recognized depends on federal agency's definition of marriage

Place of celebration vs. place of residence

Agencies that currently recognize marriages.....

IRS - MUST now file as married if legally married

Possibilities of tax refunds for years not allowed to file as married

May need to amend past returns

May be entitled to refund on taxes paid for DP health insurance premiums

FMLA

Agencies that don't currently recognize marriages

Social Security and Medicare - where reside

Other issues –

retroactivity, mobility (on vacation, married in one state, not the next where you have car accident)

D. NC Issues

Considered single for purposes of:

Taxes - current Dept. Of Revenue ruling

State health plan

Divorce

Custody

150+ state laws re marriage

Inheritance

Name change issues (best advice - change SS card first, then passport, then state DMV)

E. Factors to Consider When Advising Clients

Ages, length of relationship, assets, health

Age - if young, have time to develop financial plan while married

If older, history of not planning together

Assets - if disparities in income, may either benefit or harm individuals

Helps low income with SS benefits, helps high income with taxes

Health - if older and one has health issues, may harm assets of high income person who is healthy

Children - if want to do second parent adoption, don't get married until afterwards or will lose adoption tax credit

Taxes - would clients benefit from gift tax benefits for spouses

III. Family Creation

A. **Insuring Children Have As Much Legal Protection As Possible From Both Parents.**

As noted earlier, if a child is born in North Carolina to same-sex parents, only the genetic or adoptive parent will be recognized as a legal parent. The harm to children from having only one legal parent are numerous and substantial.¹ Thus the challenge for family law practitioners is to provide same-sex families with as much additional legal protection as possible to remedy the harms and risks to children of having only one legal parent.

¹For a detailed listing of such harms, see Complaint filed in *Fisher-Bourne v. Smith*, U.S. District Court for the Middle District of N. C., Case #1:12-CV-00589, Compl. 39-45, June 13, 2012.

1. Documents that would be helpful to suggest to clients include:

Donor insemination and surrogacy agreements when assisted reproduction is used:²

- Agreements establish rights between the parties and clarify that donor or surrogate has no parental rights or responsibilities and prospective parents shall have all legal rights to any child; since extremely complex to do and the risks of future problems are high, all parties and their attorneys should proceed with utmost caution and careful consideration of the numerous issues. These agreements are useful in any future dispute regarding custody and support argument that donor or surrogate knowingly and fully relinquished parental rights.
- ADD RE PBOs

Parenting agreement:

- Clarifies rights and responsibilities of both parents while in a relationship and if relationship ends
- Include provision that non-legal parent is obligated to provide child support if parties separate
- Most helpful if parties don't take any other legal action to protect rights of non-legal parent
- Although court not bound by agreement, it is helpful as evidence of parties' intent regarding raising a child together and effect on child if access to non-legal parent was denied by legal parent.

Minor's health care power of attorney, NCGS §32A-28:

1. Executed by legal parent and authorizes non-legal parent to make medical decisions for his or her child
2. So that document will not be used against non-legal parent in a future dispute, change language to clarify parties' intent that, despite the non-legal status of one parent, the parties consider themselves to be equal parents.

²No NC statutes or case law specifically address unmarried couples or single women who bear children through donor insemination, nor is there a statute that defines the parental rights or obligations of a sperm or egg donor, or any statute, civil or criminal, mandating the supervision of donor insemination by licensed physicians and no statute prohibiting surrogacy or surrogacy contracts

Guardianship in will:

1. NCGS §35A-1225 provides for a testamentary appointment of a guardian for a minor and “...such recommendation shall be a strong guide for the clerk in appointing a guardian, but the clerk is not bound by the recommendation if the clerk finds that a different appointment is in the minor’s best interest.”

2. Important to not only appoint non-legal parent as guardian but, since clerk of court has discretion, add provisions explaining relationship to child, how partner has been raising child from birth and why it would be in best interests of child for partner to be guardian.

3. Options Available In Other States.

Much like the analysis that must be done to determine the best marriage and divorce options for clients, a similar analysis should be undertaken regarding the custody and parentage laws of other states and whether NC same-sex parents can avail themselves of any more favorable state laws that would better protect their families. Consideration should be given to what states permit second parent adoptions,³ and what states might allow joint adoptions.⁴ If your clients are considering assisted reproduction, then a review of state law in all states where the involved parties reside is necessary.

IV: Advising Clients Who Are Ending Their Relationship

A. Divorce.

Same-sex couples are now able to legally marry in nine states and the District of Columbia⁵ and the number of such states will undoubtedly continue to grow. In addition to these states, there are states which, although they do not permit same-sex marriages, recognize other forms of relationships such as civil unions or domestic partnerships.⁶ Finally, there are states which will recognize

³See Appendix E, *Adoption by LGBT Parents*, National Center for Lesbian Rights (Mar. 2012), http://www.nclrights.org/site/DocServer/2PA_state_list.pdf.

See also Appendix F, *Parenting Laws: Second Parent Adoption*, Human Rights Campaign (Dec. 14, 2012), http://www.hrc.org/files/assets/resources/parenting_laws_2nd.pdf.

⁴See Appendix G, *supra* at note 5.

⁵See Appendix A, *Summary of Laws Regarding Same-Sex Couples*, National Center for Lesbian Rights (2012), http://www.nclrights.org/site/DocServer/Relationship_Recognition_State_Laws_Summary.pdf.

⁶See Appendix B, *Marriage Equality & Other Relationship Recognition Laws*, Human Rights Campaign (Dec. 10, 2012), http://www.hrc.org/files/assets/resources/Relationship_Recognition_Laws_Map.pdf.

out-of-jurisdiction marriages either as marriages and/or other forms of relationship recognition.⁷

But determining whether a client may be legally married is only the initial legal issue. The often more pressing inquiry is “where can I get divorced?” If a same-sex couple has moved from the state where they were legally married, they may now live in a state such as North Carolina which will not recognize their marriage and therefore, they will be unable to get a divorce in the state where they currently reside. They may also not be able to get divorced in the state where they married unless they can satisfy the residency requirements of that state. The only other option is to obtain a divorce in a state which will recognize the marriage but has different residency requirements than the original marriage state. This dilemma has humorously been referred to as “wed-locked.”

To address this problem, some jurisdictions are following the lead of California and the District of Columbia which have amended their laws to provide that if a same-sex couple married in their state and the state where they currently lives doesn't not recognize the marriage, they can get a divorce in the original state without any requirement of residency.

But if a couple doesn't meet the residency requirements of the marriage state and they live in a state which doesn't recognize their marriage, they may not be able to get a divorce. To date, I am unaware of any divorce or other court order that has been issued in North Carolina which had the effect of dissolving a same-sex marriage from another state and for the time being, it would probably be difficult to obtain a same-sex divorce in our state. Accordingly, our courts would treat any married same-sex couple as unmarried and any issues as to custody or property would be decided on that basis.

Obviously, this inability to get divorce can cause numerous problems regarding ownership and division of assets, ongoing and future entitlement to additional assets acquired by each party, questions regarding governmental benefits and taxes, and the inability to marry anyone else.

B. Custody.

1. Creation of Same-Sex Families.

Same-sex couples primarily create their families through assisted reproduction or adoption. When using assisted reproduction, female same-sex couples either use known or unknown donor sperm and inseminate one of the women. Sometimes the eggs from one woman are retrieved, fertilized with donor sperm and inseminated in the other woman.

See also Appendix C: *Relationship Recognition for Same-Sex Couples in the U.S.*, National Gay and Lesbian Task Force (Nov. 7, 2012), http://www.thetaskforce.org/downloads/reports/issue_maps/rel_recog_11_7_12_color.pdf.

⁷See Appendix D: *Interstate Relationship Recognition*, Human Rights Campaign (May 7, 2011), [http://www.hrc.org/files/assets/resources/Interstate_Relationships_Recognition_Map\(1\).pdf](http://www.hrc.org/files/assets/resources/Interstate_Relationships_Recognition_Map(1).pdf).

In such instances, one woman is then the genetic mother and the other woman is the gestational mother. Male same-sex couples may use a surrogate who is inseminated with the sperm from one or both of them.

In some states, same-sex couples are able to jointly adopt a child.⁸ North Carolina adoption law does not permit any unmarried couple, opposite or same sex, to jointly adopt. Although one partner can adopt as a single individual, his or her opposite-sex partner would not be able to adopt the child without legally terminating the rights of the original adoptive parent.

Whether each same-sex parent will be recognized as a legal parent depends on the law of the state where a child was born or where the parties reside, as further discussed in this section. Regardless of the means by which same-sex parents create a family, if a child is born in North Carolina, only one of the child's same-sex parents will be recognized as a legal parent in this state.

2. Parenthood Based on Marriage.

Similar to the above analysis in regards to divorce, a NC practitioner will need to be familiar/conversant with not only North Carolina family law regarding parenthood and custody, but the laws in the state a same-sex couple were married and had a child, as well as the laws in other states which might present better legal parenting options.

When a married couple, opposite or same sex, has a child, both parents are legally presumed to be the legal parents of the child. If the couple separates and/or divorces, both parties remain legal parents unless a court terminates the parental rights of one or both parties. If a child is born during a same-sex marriage, civil union or state-recognized domestic partnership, such a child would be considered the legal child of both parents in accordance with the law of that state.

One of the first cases addressing the legal parentage of children born during a same-sex marriage is the recent case of *Hunter v. Rose*, 463 Mass. 488, 975 N.E.2d 857 (2012). The Massachusetts Supreme Judicial Court held that a California Registered Domestic Partnership (RDP), under comity principles, is a legal spousal relationship due recognition in Massachusetts and that children born during a RDP are the children of both parents. The court also affirmed the trial court ruling that it was in the children's best interests to be in the primary custody of the non-biological mother.

But, given the mobility of families today and the ever-changing laws in every state, it is advisable for the non-biological or non-adoptive initial parent to either file an action for a parentage judgment or obtain a second parent adoption. Therefore, if a same-sex couple and their family move to a state which will not recognize their marriage, nor the legal presumption of parenthood based on the marriage, there will be another legal basis creating parenthood for the second parent.

⁸See Appendix G, *Parenting Laws: Joint Adoption*, Human Rights Campaign (Dec. 14, 2012), http://www.hrc.org/files/assets/resources/joint_adoption_parenting_laws_dec2012.pdf.

This presumption of parentage based on marriage obviously does not apply if the couple, opposite or same-sex, is unmarried. But if the couple is an opposite-sex couple, the birth mother can acknowledge the paternity of the child and the male partner can be listed on the child's birth certificate and a legitimation or paternity action can be brought in order to obtain a court order establishing paternity.

3. Two Legal Parents.

A same-sex couple could both be legal parents through several means other than via a legal marriage. A female parent may have given birth or initially adopted a child as a single person and then her partner obtained a second parent adoption or a parentage court order in a state where they could do so. A male parent may have initially adopted or had a child he was genetically related to through a surrogacy arrangement and then his partner also either obtained a second parent adoption or a parentage court order.

Although second parent adoptions were granted in North Carolina for a period of time between 2004 and 2010, the N. C. Supreme Court declared that such adoptions were not authorized under our adoption statutes and were void *ab initio*.⁹ Thus, this option of establishing legal parentage for a second parent is no longer an option for same-sex parents in North Carolina.

However, pursuant to the principles of full faith and credit, any second parent adoption obtained in another state must be recognized by the courts in North Carolina. NCGS §48-2-205 of our adoption statutes specifically provides that: "A final adoption decree issued by any other state must be recognized in this State." Accordingly, if a child born in North Carolina is adopted by a second parent in another state, the child's NC birth certificate will be amended and list both same-sex parents.

If a same-sex couple are both legal parents, then any custody dispute between them should be handled by our courts like any custody dispute between opposite-sex parents. However, questions have been raised as to whether Amendment One will effect our existing legal treatment of a parent's nonmarital relationship in making a custody determination. This issue is addressed in Section 5 set forth below.

4. Custody Disputes Between a Legal Parent and a Non-legal Parent.

At present, North Carolina law does not provide any specific means for a second parent to establish legal parenthood. Therefore, in most same-sex couples who have started their families in North Carolina and continued to live here, one person will be a legal parent and one person will have no legally recognized parental rights but will have been raising a child with his or her partner since the child's birth. In those instances, the applicable analysis for deciding a custody dispute was established in a series of cases issued by the NC Court of Appeals in 2008¹⁰

⁹*Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010).

¹⁰*Mason v. Dwinnell*, 190 N.C. App. 209, 660 S.E.2d 58 (2008); *Estroff v. Chatterjee*, 190 N.C. App. 61, 660 S.E.2d 73 (2008); *Heatzig v. McLean*, 191 N.C. App. 451, 664 S.E.2d 347 (2008).

and relied upon by the NC Supreme Court in *Boseman v. Jarrell* in 2010.

It was well established prior to these cases, that a parent has a constitutional protected interest in the custody of his or her children and is presumed to act in the best interests of their children. Therefore, before any non-legal parent can be awarded custody, he or she must show standing under our custody statutes and most importantly, show that the legal parent waived his or her paramount constitutionally protected parental rights. Only then can the court address what custody arrangement is in the best interest of the child. As declared by our Supreme Court in *Boseman*,¹¹ a nonparent could be entitled to custody if the parties “jointly decided to create a family and *intentionally* took steps to identify [the nonparent] as a parent of the child.”¹² The Court further concluded that “if a parent cedes paramount decision-making authority, then, so long as he or she creates no expectation that the arrangement is for only a temporary period, that parent has acted inconsistently with his or her paramount parental status.”¹³

The non-legal parent under such circumstances is considered a *de facto* parent and he or she may have standing to seek custody or visitation, NCGS §50-13.1(a); can be awarded custody or visitation; and could be secondarily liable for child support, pursuant to NCGS §50-13.4(b) as a person “standing in loco parentis...” However, the *de facto* parent status does not confer full legal parentage. The *de facto* parent does not have other parental rights or privileges, nor is he or she subject to parental responsibilities. Most significantly, the child is not entitled to the benefits that might flow from full parental status, such as social security benefits if the *de facto* parent dies while the child is a minor, and the stability and security of a legal relationship that cannot easily be severed. Further limiting the scope of the *de facto* doctrine is the fact that it is not established until a custody dispute and thus leaves the children of same-sex intact families without the legal protection of two parents.

5. Possible Effect of Amendment One on Custody Disputes.

Concern has been raised that Amendment One would impact our existing law regarding custody cases in at least two ways.¹⁴ First, under present law, a parent’s personal nonmarital relationship is not a factor in a court’s custody determination unless it can be shown to be harmful or not in the best interests of a child. Pursuant to this principle, “North Carolina courts have refused to take a parent’s unmarried cohabitation into account in custody suits, absent evidence that it had an adverse impact on the child.”¹⁵ Our courts will also not presume harm

¹¹*Boseman, supra*, at 503.

¹²Maxine Eichner, Barbara Fedders, Holning Lau & Rachel Blunk, *Potential Legal Impact of the Proposed Legal Union Amendment to the North Carolina Constitution* 1, 24 (Nov. 8, 2011), <http://www.law.unc.edu/documents/faculty/marriageamendment/dlureportnov8.pdf>.

¹³*Boseman*, 364 N.C. at 552, 704 S.E.2d at 504 (2010) (citing *Mason* 190 N.C. App. at 225-28, 660 S.E.2d at 68-70 (2008)).

¹⁴Eichner et al., *supra*.

¹⁵*Id.* at 19 (citing *Williford v. Williford*, 303 N.C. 178, 277 S.E.2d 515 (1981)).

based solely on cohabitation.¹⁶ With the passage of Amendment One, a judge may believe that the amendment embodies a public policy against nonmarital relationships and that such relationships have a per se negative impact on children.¹⁷

Secondly, Amendment One could impact the law governing the determination of custody disputes between same-sex parents, as discussed in Section 4 above. It is possible that a court could conclude that consideration of the parents' relationship in determining whether a legal parent has waived his or her constitutionally-protected would be contrary to Amendment One. However, such a determination can be made by looking at the actions of the parties as parents and the relationship established between the non-legal parent and the child, and not the relationship between the parents. Furthermore, to interpret the amendment as changing our existing law and limiting the custodial rights of non-legal parents, would cause great harm to the children who are bonded with the non-legal parent and need the stability and security that comes from a continued relationship.

C. Property Issues.

As discussed above in Section A, determining the legal effect of a same-sex couple's valid marriage in another state involves numerous and complex issues. In addition to assisting a LGBT client about what states he or she might be able to get a divorce, a practitioner must also consider the effect of property laws in the possible jurisdictions and where the most favorable jurisdiction from your client's perspective might be. Obviously, if it is possible to get divorced in a state that recognizes the marriage, then property will be divided pursuant to that state's laws regarding division of marital assets. But even among the nine states that recognize same-sex marriages, there are many differences in property issues, with some states having community property law and others using various approaches to determining marital assets and equitable distribution. This disparity in laws and the non-recognition of marriages in most states, opens the door for some individuals to avoid giving assets to a same-sex spouse by bringing actions in non-recognition states.

Amendment One as originally drafted could have precluded enforcement of any private agreements between unmarried couples. The version that was enacted into law clarifies that our courts can enforce such private agreements, such as a property agreement. Thus, our existing law regarding division of property between unmarried individuals should not be affected by Amendment One.

¹⁶*Id.* (citing *Browning v. Helff*, 136 N.C. App. 420, 424-25, 524 S.E.2d 95, 98-9 (2000); Suzanne Reynolds, *Lee's North Carolina Family Law* §13.14 (5th ed., 2002)).

¹⁷*Id.* at 23.

Although there is limited North Carolina law on this subject, it can be inferred that our state stands with the majority of other states regarding property rights and remedies for unmarried couples. See *Lee's North Carolina Family Law*, Chapter 4, Nonmarital Living Arrangements (S. Reynolds 5th ed. 2002) [hereinafter *Reynolds*]. No rights are established simply by cohabiting and the courts will not apply our domestic laws upon dissolution of an unmarried relationship. Furthermore, no court has directly recognized a contract based solely on the relationship between the parties and, of course, any contractual agreements that appear to be based on sexual services would be void as against public policy. However, contract and equity principles, such as constructive and resulting trust, quantum meruit and estoppel, have been applied by our courts where a contract is found that is independent of the cohabitation. Some pertinent NC cases include:

Rhue v. Rhue, 189 N.C. App. 299, 658 S.E.2d 52 (2008) - parties lived together for 25 years after having been divorced. Court concluded plaintiff had presented sufficient evidence to infer a partnership and plaintiff's actions were done with understanding that defendant would take care of her. The lack of a formal agreement was not dispositive of whether partnership existed.

Patterson v. Strickland, 515 S.E.2d 915 (N.C. App. 1999), 2003 N.C.App LEXIS 429 (2003), unpublished opinion - in the second appeal the Court of Appeals upheld an award of 45% interest in real estate to cohabitor based on equitable theories of constructive and resulting trusts. However, it took the plaintiff over 7 years & 2 jury trials to get this award of for a house bought for less than \$40,000.

Wike v. Wike, 115 N.C. App. 139, 445 S.E.2d 406 (1994) - Defendant asserted plaintiff should be barred from enforcing partnership agreement because their "illicit relationship" formed basis for agreement; court found no evidence the relationship formed any part of consideration for contract.

Thomas v. Thomas.102 N.C..App. 124, 401 S.E.2d 396 (1991) - reversed award to cohabitor based on implied contract/quantum meruit, but suggested cohabitor may have claim for unjust enrichment.

One other option if real property is in dispute, is to initiate a petition for partition pursuant to NCGS, Chapter 46. Given the cost and time involved in bringing any type of litigation, mediation and arbitration are often better alternative to resolve property disputes between unmarried couples.

List re marriage states, etc.

Organizations/websites: NCLR, ACLU, HRC, Lambda, Task Force